In the High Court of Judicature at Madras

Dated: 17.06.2006

Coram:

The Hon'ble Mr. Justice J.A.K.SAMPATH KUMAR

Appeal Suit.No.332 of 1992
and
Cross Objection No.139 Of 1995

State of Tamil Nadu represented
by Superintending Engineer,
Highways and Rural Works,
Madras-600 025.

.. Appellant/Respondent
in Cross Objection

vs.

P.Sivanandham

.. Respondent/Appellant
in Cross Objection

Prayer: Appeal and Cross Objection against the Judgment and Decree of the learned Subordinate Judge of Chengalpattu in O.S.No.204 of 1982 dated 28th day of April, 1989.

For appellant : Mr.V.R.Thangavelu, GA

For respondent : Mr.N.E.A.Dinesh for
Mr.V.Nicholas

J U D G M E N T

The appeal and cross objection arise out of the judgment dated 28.04.1989 rendered in O.S.No.204 of 1982 on the file of the Principal Subordinate Judge, Chengalpattu in and by which the learned Subordinate Judge decreed the suit partially, while dismissing the counter claim.

2. Mr. V.R.Thangavelu, learned Government Advocate argued for the appellant and Mr. N.E.A.Dinesh, learned counsel argued for the respondent.

3. For convenience, the parties are referred as arrayed in the suit.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4. Brief facts of the plaintiff's case are as follows:

(i) An estimate, for construction of bus stand in Madurantakam Town Panchayat, was sanctioned in Cr.No.1/70-71 in Superintending Engineer's (Highways and Rural Works) Madras No.D.Dis.11433/70/D8, dated 2.5.70, as Deposit works. The tender for the above work was invited. The defendant is the successful bidder for the tender and the cost of the work was estimated at Rs.1,12,000/- in Cr.10/73-74 in plaintiff's Memo No.6288/72/D4, dated 5.12.1973.

(ii) Though the defendant undertook the said work, he was not doing the work according to time schedule. The defendant Contractor delayed the work for which necessary notices with penalty have been issued to the defendant.

(iii) Moreover, the plaintiff has also provided the defendant Contractor with necessary cement and steel for execution of the said work. Since the defendant delayed the work, the plaintiff terminated the defendant Contractor by 31.12.75. The defendant executed only 90% of the estimated work and the balance 10% of the work was completed by the plaintiff by assigning the work to some other contractor.

(iv) Notice was issued to the defendant contractor to return the unused balance of materials. The defendant has to deliver the balance of materials, namely, Cement 12.40 M.T. valued at Rs.7,440/- and Steel 2.411 M.T. worth about Rs.11,813.90. The total cost of the said materials is Rs.19,253.90.

(v) In the final bill of the defendant Contractor, a sum of Rs.1,156.45 is payable to the defendant Contractor and the same has been deducted from the value of the materials to be delivered by the defendant to the plaintiff. The net amount due is Rs.18,097.45.

(vi) As a result of entrusting the remaining items of work to other independent agencies, the Government has incurred an additional expenditure of Rs.14,086.88. As per the agreement Clause Nos.11 and 12, the defendant Contractor has agreed to reimburse the Government in the event of his work being terminated and completed by the independent agencies and if the Government incurred additional expenditure, the defendant is liable to pay the above said additional expenditure also in addition to the value of unused materials.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

5. The case of the defendant is as follows:

(i) The delay in execution of the work was due to the fault of the plaintiff only. The site was not handed over to the defendant in time. The defendant took necessary steps to get the vacant site for execution of the work as undertaken. It is one reason why the plaintiff was going on extending the time granted to the defendant till 31.3.1976.

(ii) The defendant already finished major portion of the work to a total value of Rs.35,852.00, which was measured by the Officer of the plaintiff and bills also were settled to the defendant. The defendant is still to be paid a sum of Rs.22.044.00 by the plaintiff. Further, the plaintiff is liable to return to the defendant Rs.3,400/-, the Security Deposit of the defendant with the plaintiff. The defendant incurred 485-52 bags of cement (24.26 M.T). The supply of cement and steel mentioned in the plaint is not admitted. In any event, the defendant spent twice the quantity of cement alleged to have been supplied to him. With regard to the steel what all was supplied to the defendant, the same was taken away by the plaintiff even during the absence of the defendant. The defendant is not liable to pay any amount to the plaintiff under any heads. Hence, the plaintiff is not entitled to any amount from the defendant, whereas the plaintiff alone has to pay a sum of Rs.26,600-43 towards the work done by the defendant, Security Deposit and excess amount with the plaintiff.

6. Upon hearing the rival contentions, the following points have to be decided to come to a conclusion, whether the finding of the trial Court is in order or otherwise.

(i)Whether the construction of Bus Stand in Madurantakam Town Panchayat with an estimate of Rs.1,12,000/- was entrusted to the defendant?

(ii)Whether the defendant completed only 90% of the estimated work?

(iii)Whether the plaintiff completed the remaining work namely, 10% of the work by engaging independent agency?

(iv)Whether the plaintiff incurred an additional expenditure of Rs.14,086.88 for completion of the remaining unattended work?

(v)Whether the defendant has to pay a sum of Rs.18,097.45 towards the value of the unused balance of materials namely, 1)Cement 12.40 M.T. 2)Steel 2.403 M.T.?

(vi) Whether the delay in execution of work is only due to the fault of the defendant?

(vii) Whether the defendant is entitled to a counter claim?

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

7. The plaintiff examined one witness and marked 26 exhibits to prove his claim. The defendant examined one witness and marked 5 exhibits to confront the claim of the plaintiff and also to sustain his counter claim.

Point No. I to VII

8. The lower Court after analysing the evidence both oral and documentary, came to a conclusion that the delay in execution of work was only due to the fault of the defendant.

9. I have perused the evidence of the plaintiff and the defendant coupled with Ex.A.6 in this case. From Ex.A.6, it is revealed that the suit site was delivered to the defendant as early as 19.10.72 itself. So, the contention of the defendant that the delay in execution of work is due to the fault of the plaintiff, as the vacant site was not handed over to him in time is not true. In fact, the lower Court appreciated the evidence of the plaintiff coupled with Ex.A.6 came to a right conclusion that the delay in execution of work was only due to the fault of the defendant and not otherwise. The finding of the lower Court is in order. The finding of the trial Court in this regard does not require any interference.

10. The evidence on record would show that the plaintiff supplied necessary materials namely, cement and steel to the defendant for execution of the estimated work. It is also admitted that the defendant did not execute 10% of work. So, it is proved that the unused balance of materials, namely, cement 12.40 M.T. and steel 2.403 M.T. are with the defendant and not returned to the plaintiff at any point of time.

11. It is a specific case of the defendant that the plaintiff removed the unused materials from the site without his knowledge. There is nothing on record to show that the said unused materials were removed by the plaintiff from the site without the knowledge of the defendant. In fact, the lower Court rightly came to a conclusion that the defendant has to return the unused balance of materials, namely, cement 12.4 M.T. and steel 2.403 M.T. Though the trial Court has given a specific finding that the defendant has to return the unused materials namely, cement 12.4 M.T. and steel 2.403 M.T., while arriving at the value of the materials, it wrongly calculated the cost of the steel for 2.03 M.T. Instead of2.403. The value of the unused balance of materials to be handed over by the defendant to the plaintiff after giving credit to a sum of Rs.1,156.45 is Rs.18,057.55, whereas the trial Court committed mistake in

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

calculation arriving at the correct value of the unused materials and ultimately came to a conclusion that the defendant is liable to pay only Rs.16,230.55 towards the cost of unused materials. So, the value arrived at by the trial Court in this regard is to be enhanced from Rs.16,230.55 to Rs.18,057.55. Accordingly, it is held that the plaintiff is entitled to a sum of Rs.18,057.55 towards the cost of the unused materials from the defendant. This issue is answered accordingly.

12. The defendant paid a sum of Rs.3,400/- towards Security Deposit to the plaintiff. There is no dispute regarding this fact. Since the contract was terminated at the instance of the plaintiff, the plaintiff is liable to pay Security Deposit amount to the defendant. The lower Court has rightly ordered return of the Security Deposit amount of Rs.3,400/- by the plaintiff to the defendant. The finding of the trial Court in this regard is in order. The order of finding of the trial Court does not require any interference. Thus, this point is answered accordingly.

13. It is a specific case of the plaintiff that he has incurred an additional expenditure of Rs.14,086.88 and the defendant is entitled to reimburse the same to the plaintiff as per the agreement Clause Nos.11 and 12. The defendant confronted in this regard. The plaintiff has not placed any materials to show that the plaintiff incurred an additional expenditure of Rs.14,086.88 over and above the estimated cost of Rs.11,120/- towards the execution of the remaining 10% of the work. In fact, there is no material placed by the plaintiff in this regard. The trial Court in fact taken note of this point and rightly negatived the claim of the plaintiff. The finding of the trial Court is perfect and it does not require any interference. This point is answered accordingly.

14. It is a specific case of the defendant that he had done the work for Rs.22,044/- for which the plaintiff has not paid the same. But the defendant failed to file necessary documents to show that he had done the work for Rs.22,044/- over and above the actual work executed by him for which he received necessary payment. Since the defendant failed to file necessary documents to prove this point, the trial Court has rightly held that the defendant is not entitled to claim this amount and accordingly, rejected the same. The finding of the trial Court is in order and it does not require any interference. This point is answered accordingly.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

15. In the result, the appeal is partly allowed. The decree amount of Rs.16,230.55 in favour of the plaintiff is enhanced to Rs.18,057.55. The plaintiff is entitled for proportionate costs for the differential amount. With regard to the other respects, the appeal and the cross objection fails. The parties are directed to bear their respective costs in the appeal and Cross Objection.

sgl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Subordinate Judge, Chengalpattu.

2. The Record Keeper VR Section, High Court, Madras.

+ 1 cc to Spl Govt Pleader SR No.25506

A.S.No.332 of 1992
and
Cross Objection No.139 Of 1995

MAB(CO)
SR/31.7.2006

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/